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8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN FRANCISCO DIVISION
 11

12 RAHINAH IBRAHIM, an individual,

13 Plaintiff,

14 v.

15 DEPARTMENT OF HOMELAND
 16 SECURITY; JANET NAPOLITANO, in her
 official capacity as Secretary of the
 17 Department of Homeland Security;
 MICHAEL CHERTOFF, in his official
 18 capacity as the former Secretary of the
 Department of Homeland Security; TOM
 19 RIDGE, in his official capacity as the former
 Secretary of the Department of Homeland
 Security; ERIC H. HOLDER, JR., in his
 20 official capacity as Attorney General;
 TERRORIST SCREENING CENTER;
 21 LEONARD C. BOYLE, in his official
 capacity as Director of the Terrorist
 22 Screening Center; DONNA A. BUCELLA,
 in her official capacity as former Director of
 23 the Terrorist Screening Center; FEDERAL
 BUREAU OF INVESTIGATION; ROBERT
 24 MUELLER, in his official capacity as
 Director of the Federal Bureau of
 25 Investigation; ARTHUR M. CUMMINGS,
 II, in his official capacity as Executive
 26 Assistant Director of the FBI's National
 Security Branch; NATIONAL
 27 COUNTERTERRORISM CENTER;
 MICHAEL E. LEITER, in his official
 28 capacity as Director of the National

CASE NO. C06-0545 WHA

**SECOND AMENDED COMPLAINT
 FOR:**

- 1) 42 U.S.C. § 1983 – Violation of Equal Protection
- 2) *Bivens* – Violation of Equal Protection
- 3) 42 U.S.C. § 1983 – Violation of Fourth Amendment
- 4) *Bivens* – Violation of Fourth Amendment
- 5) 42 U.S.C. § 1983 – Violation of First Amendment Right to Freedom of Religion
- 6) *Bivens* – Violation of First Amendment Right to Freedom of Religion
- 7) 42 U.S.C. § 1983 – Violation of First Amendment Right to Freedom of Association
- 8) *Bivens* – Violation of First Amendment Right to Freedom of Association
- 9) CA Civ. Code § 52.1 – Interference With Exercise of Civil Rights
- 10) False Imprisonment
- 11) Intentional Infliction of Emotional Distress
- 12) Negligent Infliction of Emotional Distress
- 13) Violation Of The United States

Counterterrorism Center; DEPARTMENT OF STATE; HILARY CLINTON, in her official capacity as Secretary of State; SAN FRANCISCO AIRPORT; CITY AND COUNTY OF SAN FRANCISCO; SAN FRANCISCO POLICE DEPARTMENT; RICHARD PATE, an individual; JOHN BONDANELLA, an individual; JOHN CUNNINGHAM, an individual; ELIZABETH MARON, an individual; US INVESTIGATIONS SERVICES, INC., a Virginia Corporation; and DOES 13 through 100, inclusive.

Defendants.

Constitution and the APA, Under The APA And The First, Fourth, Fifth And Fourteenth Amendments To The United States Constitution

DEMAND FOR JURY TRIAL

Plaintiff hereby alleges as follows:

INTRODUCTORY STATEMENT

1. The above-entitled action is brought under the United States Constitution, *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), 5 U.S.C. § 701 et seq., 28 U.S.C. § 2201, 42 U.S.C. § 1983, the Constitution of the State of California, and California state law, on the grounds that defendants, among other things, violated the federal and state constitutional rights of plaintiff, granted to her under the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution, and article I, sections 3, 4, 7, 13 and 15 of the California Constitution.

JURISDICTION AND VENUE

2. This case arises under the United States Constitution and the laws of the United States. This Court has jurisdiction over this action pursuant to Article III of the United States Constitution, 5 U.S.C § 552a, and 28 U.S.C. §§ 1331, 1343, 1361, and 1367(a), and pursuant to *Ibrahim v. Department of Homeland Security* (9th Cir. 2008) 538 F.3d 1250. Venue is proper in this district, pursuant to 28 U.S.C. § 1391(e), because defendants include officers and employees of the United States and the acts and conduct complained of herein occurred in this judicial district.

INTRADISTRICT ASSIGNMENT

3. Assignment of this action to the San Francisco Division is proper under Civil Local Rule 3-2(d), because a substantial part of the events giving rise to the claims alleged herein occurred in the County of San Mateo.

PARTIES

4. Plaintiff, RAHINAH IBRAHIM, ("IBRAHIM"), is an individual, who obtained her Doctorate Degree at Stanford University, while in the United States on a student visa, and currently resides in the country of Malaysia. IBRAHIM has no criminal record and no links to terrorist activity.

5. On information and belief, defendant, ERIC H. HOLDER JR. ("HOLDER"), is the current Attorney General of the United States and the head of the United States Department of Justice. He is sued here in his official capacity. Under Homeland Presidential Security Directive-6 ("HPSD-6") and its implementing memorandum of understanding dated September 16, 2003 ("2003 MOU"), the Attorney General is responsible for establishing an organization to consolidate the United States Government's approach to terrorist screening and the use of information in the screening process, and for coordinating with the Secretary of State, the Secretary of the Department of Homeland Security, and the Director of Central Intelligence in this effort. Pursuant to this directive, the TERRORIST SCREENING CENTER ("TSC"), was established.

6. On information and belief, defendant, FEDERAL BUREAU OF INVESTIGATION ("FBI"), is a department of the United States Government and is included in the Department of Justice. Through the TSC, the FBI maintains a government watchlist and transmits this list to the Transportation Security Administration ("TSA"). The airlines are required to check their passenger lists against the No-Fly List.

7. On information and belief, defendant, ROBERT MUELLER ("MUELLER"), is the director of the FBI, and is being sued in his official capacity as such.

8. On information and belief, defendant, TSC, is a department of the United States Government. Its mission is to maintain a list of "Terrorist Identities Information" for agencies of

1 the United States Government, including the TSA, a sub-agency of the Department of Homeland
2 Security ("DHS"), with authority to regulate airport security. The TSC is responsible for
3 maintaining a consolidated terrorist screening database (the "TSDB") which includes the "No-
4 Fly List." The TSC determines who is on the list that makes up the No-Fly list.

5 9. On information and belief, defendant, ARTHUR M. CUMMINGS, II
6 ("CUMMINGS"), is the Executive Assistant Director of the FBI's National Security Branch, and
7 oversees the TSC. He is sued here in his official capacity.

8 10. On information and belief, defendant, LEONARD C. BOYLE ("BOYLE") is the
9 Director of the TSC. He is sued here in his official capacity. The Director of the TSC is
10 responsible for establishing procedures to address repeated misidentification of any person, and
11 review the list and delete or correct any erroneous or outdated information.

12 11. On information and belief, defendant, DONNA A. BUCELLA ("BUCELLA"), is
13 the former Director of the TSC. She is sued here in her official capacity.

14 12. On information and belief, defendant, DHS, is a department of the United States
15 Government, created on October 8, 2001, to develop and coordinate the implementation of a
16 comprehensive national strategy to secure the United States from terrorist threats or attacks.
17 Under HPSD-6 and the 2003 MOU, the DHS is responsible for staffing the TSC, along with the
18 DEPARTMENT OF STATE ("DOS"), Department of Justice, and other federal departments and
19 agencies.

20 13. On information and belief, defendant, JANET NAPOLITANO
21 ("NAPOLITANO"), is the current Secretary and head of the Department of Homeland Security.
22 She is sued here in her official capacity. Under HPSD-6 and the 2003 MOU, the Secretary of the
23 DHS is responsible for, *inter alia*, (a) coordinating with the Attorney General, acting through the
24 Director of the FBI, to establish the TSC, (b) coordinating with the Attorney General, acting
25 through the Director of the TSC, to review alien nominations to the TSC's database; (c) in
26 consultation with the other parties to the 2003 MOU and the Director of the TSC, establishing
27 necessary guidelines and criteria to, *inter alia*, "initiate appropriate law enforcement or other
28 governmental action, if any, when a person submitted for query by a private sector entity is

1 identified as a person in the terrorist screening database”; (d) reviewing each nomination to the
2 TSC’s database and determining whether to include that person in records that can be accessed
3 by State, local, territorial, and trial officials for homeland security purposes.

4 14. On information and belief, defendant, MICHAEL CHERTOFF (“CHERTOFF”),
5 is a former Secretary and head of the Department of Homeland Security. He is sued here in his
6 official capacity.

7 15. On information and belief, defendant, TOM RIDGE (“RIDGE”), is a former
8 Secretary and head of the Department of Homeland Security. He is sued here in his official
9 capacity.

10 16. On information and belief, defendant, NATIONAL COUNTERTERRORISM
11 CENTER (“NCTC”) serves as the primary organization in the United States government for
12 analyzing and integrating all intelligence regarding terrorism, and provides information to the
13 TSC.

14 17. On information and belief, defendant, MICHAEL E. LEITER (“LEITER”), is the
15 Director of the NCTC. He is sued here in his official capacity.

16 18. On information and belief, defendant, DOS, is a department of the United States
17 Government. Under HPSD-6 and the 2003 MOU, the DOS is responsible for staffing the TSC,
18 along with the DHS, Department of Justice, and other federal departments and agencies.

19 19. On information and belief, defendant, HILARY CLINTON (“CLINTON”) is the
20 current Secretary and head of the DOS. She is sued here in her official capacity. Under HPSD-6
21 and the 2003 MOU, the Secretary of the DOS is responsible for, *inter alia*, (a) coordinating with
22 the Attorney General, acting through the Director of the FBI, to establish the TSC, and (b)
23 reviewing each nomination to the TSC’s database and determining whether to include the person
24 in records that may be accessed by foreign governments cooperating with the United States to
25 fight global terrorism.

26 20. On information and belief, defendant, CITY AND COUNTY OF SAN
27 FRANCISCO (“CCSF”) is a municipal entity, which also oversees the SAN FRANCISCO
28 POLICE DEPARTMENT. On information and belief, San Francisco International Airport

1 (“SFO”), is a part of the CCSF.

2 21. On information and belief, defendant, SAN FRANCISCO POLICE
3 DEPARTMENT (“SFPD”), is a police department which has jurisdiction over events occurring
4 at SFO.

5 22. On information and belief, defendant, RICHARD PATE (“PATE”), is a Police
6 Sergeant for SFPD.

7 23. On information and belief, defendant, J. CUNNINGHAM (“CUNNINGHAM”),
8 badge number 236, is a police officer of the SFPD.

9 24. On information and belief, defendant, ELIZABETH MARON (“MARON”), is a
10 police officer of the SFPD.

11 25. On information and belief, defendant, JOHN BONDANELLA,
12 (“BONDANELLA”), from June, 2004, through May, 2005, was an employee of US
13 INVESTIGATIONS SERVICES, INC. (“USIS”), and was serving as a watch officer in the
14 TRANSPORTATION SECURITY OPERATIONS CENTER (“TSOC”).

15 26. On information and belief, USIS is a corporation, organized and existing under
16 the laws of the State of Virginia, but which does business and has offices all over the United
17 States, including all over California. USIS provides intelligence and staffing services to various
18 entities, including federal agencies. USIS was the employer of defendant, BONDANELLA, and
19 provided BONDANELLA as a watch officer for the TSOC from June, 2004 through May, 2005.
20 The TSA disburses “Federal Security Directors” (“FSDs”) to all of the commercial airlines in the
21 US, to lead and coordinate security activities at the respective airlines. The TSOC serves as the
22 point of contact for security related operations, incidents, or crises in aviation and all surface
23 modes of transportation, and provides guidance to FSD’s as to how to handle security related
24 issues.

25 27. The true names or capacities, whether individual, corporate, associate or
26 otherwise of defendants, DOES 13 through 100, inclusive, are unknown to plaintiff, who
27 therefore sues said defendants by such fictitious names. Plaintiff prays leave to amend the
28 complaint to show the true names and capacities of defendants when the same have been

1 ascertained.

2 **GENERAL ALLEGATIONS**

3 28. Plaintiff brings this lawsuit to challenge defendants' administration, management
4 and implementation of the TSC's TSDB, including the "No-Fly List", a list circulated to
5 commercial airlines and security personnel with directions to detain and question any passenger
6 whose name matches or is similar to one on the No-Fly List. Plaintiff further brings this lawsuit
7 to challenge the placement of her own name on any government list, including the No-Fly List.

8 29. Defendants began implementing the No-Fly List in November, 2001. Since then,
9 it has resulted in hundreds, if not thousands, of innocent passengers being routinely stopped,
10 questioned, searched, and sometimes physically arrested, as in this case. Defendants do not
11 inform individuals that they have been placed on any government list or why they are on the list.
12 Moreover, individuals whom defendants determine are not security threats continue to be
13 identified on any government list, including the No-Fly List. Passengers, therefore, have no
14 meaningful opportunity to challenge their identification.

15 30. For several years before the terrorist attacks of September 11, 2001, the U.S.
16 Government issued directives identifying persons who were deemed to pose a threat to civil
17 aviation. In November, 2001, the TSA was formed and assumed responsibility for compiling
18 and administering these directives, with the assistance of the TSC. Today, defendants maintain
19 at least two watch lists of individuals perceived to be threats to aviation security. The "no-fly"
20 list contains names of people which airlines are prohibited from transporting. The "selectee" list
21 contains names of passengers who must go through additional security screening before boarding
22 an aircraft. These two lists collectively are referred to as the "No-Fly List." On information and
23 belief, the No-Fly List contains thousands of names, primarily names of individuals of Muslim or
24 Middle Eastern descent.

25 31. Until November, 2002, defendants denied the existence of the No-Fly List. Until
26 today, defendants have refused to disclose important information regarding the No-Fly List,
27 including the criteria for placing names on or removing names from the No-Fly List, procedures
28 for amending information on the List such as when it is determined that an individual is not a

1 security threat, or rules for maintaining or managing the List. Because defendants have refused
2 to provide any of this information, defendants may be using race, religion, ethnicity, national
3 origin, or the exercise of protected First Amendment rights as factors in maintenance and
4 implementation of the No-Fly List.

5 32. On information and belief, after the TSC became operational in 2003, it became
6 responsible for maintaining and updating a consolidated terrorist screening database, including
7 the No-Fly List, based on information received from the predecessor organization of the NCTC
8 (the Terrorist Threat Integration Center), the FBI, and other federal agencies. Pursuant to the
9 2003 MOU, the TSC was to ensure that available information possessed by state, local,
10 territorial, and tribal governments was considered in determinations by the TSC.

11 33. On information and belief, defendants make available continually updated
12 versions of the No-Fly List to commercial airlines in the United States. The 15 domestic airlines
13 have almost half a million employees and, on information and belief, a substantial percentage of
14 these employees have access to the No-Fly List. On information and belief, the No-Fly List is
15 also provided to customs and immigration agents, airport security, and law enforcement
16 agencies. Moreover, information from the No-Fly List is inputted into other security databases,
17 including those maintained by the NCTC, the FBI, the DOS, the DHS, the TSA, or other federal
18 agencies. On information and belief, defendants and the heads of their departments instruct
19 recipients of the No-Fly List to not allow on a flight those whose name is similar or identical to a
20 name on the No-Fly List. Even if the passenger's actual identity is verified, a boarding pass is
21 issued which is stamped with a mark to indicate the passenger must be subjected to enhanced
22 screening, also referred to as "secondary screening."

23 34. Innocent passengers subjected to this treatment are stigmatized, humiliated, and
24 subjected to interrogations, delays, enhanced searches, detentions, travel impediments, and
25 sometimes actual physical arrest without a warrant or any probable cause. This treatment is
26 completely unexpected as they have no notice that they have been placed on the No-Fly List.

27 35. Plaintiff, IBRAHIM, was subjected to this humiliating treatment on January 2,
28 2005, at the SFO, while traveling to Malaysia, through an initial stop in Hawaii.

1 36. IBRAHIM is a citizen of Malaysia. She is a Muslim woman who is clearly
2 identifiable as Muslim as she wears a head scarf, also known as a "hijab." IBRAHIM has no
3 criminal record and no ties whatsoever to any terrorist activity. At the time of the incident,
4 IBRAHIM was a student at Stanford University, studying to obtain her Doctorate Degree (PhD),
5 and lawfully in the United States on a student visa. IBRAHIM's student visa was valid from
6 September 26, 2001 to January 11, 2007. She was preparing her thesis on affordable housing
7 and on January 2, 2005, IBRAHIM was scheduled to fly to Kuala Lumpur, Malaysia, with a
8 changing flight in Hawaii, to present her research findings at a conference sponsored by Stanford
9 University. She was scheduled to return to Stanford in March, 2005, to submit her dissertation
10 and complete her PhD.

11 37. Prior to her trip, in October, 2004, IBRAHIM had a hysterectomy surgery at
12 Stanford University Medical Hospital, with an extremely invasive abdominal approach.
13 IBRAHIM suffered severe complications from her surgery which extended her recovery period
14 for months. IBRAHIM also suffered back and abdominal pain from her surgery and was
15 regularly taking medication for these complications.

16 38. On January 2, 2005, at approximately 7:00 a.m., IBRAHIM arrived at SFO with
17 her fourteen-year old daughter. IBRAHIM and her daughter were scheduled to leave on a United
18 Airlines flight from SFO, at 9:00 a.m. IBRAHIM and her daughter, escorted by IBRAHIM's
19 friend, went to the ticket counter to obtain their boarding passes and check in their bags.
20 IBRAHIM informed United Airlines of her medical complications and requested wheelchair
21 transportation to the airline gate.

22 39. At that time, a United Airlines employee, David Nevins, approached IBRAHIM
23 and asked to see her tickets. Nevins called SFPD and informed them that IBRAHIM was on the
24 No-Fly List. At the request of Nevins, defendants, CUNNINGHAM and PATE, of SFPD,
25 arrived at the airport. On information and belief, PATE checked the No-Fly List for
26 IBRAHIM's name. He called defendant, BONDANELLA, of the TSIS in Washington, D.C.
27 Defendant, BONDANELLA, told defendant, PATE, to not allow IBRAHIM on the flight, to
28 contact the FBI, and to detain IBRAHIM for questioning. A SFPD officer, whose name is not

1 known to plaintiff, also arrived at the scene.

2 40. Meanwhile, IBRAHIM stood waiting for an hour and a half, with no wheelchair,
3 while she suffered from back and abdominal pain. IBRAHIM's friend informed the SFPD
4 officers several times of IBRAHIM's medical condition.

5 41. At 8:45 a.m., fifteen minutes before IBRAHIM's flight was scheduled to leave,
6 defendant, CUNNINGHAM, told IBRAHIM that she was being arrested. IBRAHIM was
7 handcuffed by CUNNINGHAM, with her hands placed behind her back, in the middle of the
8 airport, in front of her fourteen-year old daughter, and everyone else at SFO. IBRAHIM was not
9 informed as to why she was being arrested. Instead, she was taken to the SFPD police station,
10 escorted by three male officers.

11 42. Upon arriving at the police station, IBRAHIM was searched by defendant,
12 MARON. During this search, MARON attempted to remove IBRAHIM's hijab and searched
13 under her hijab in public view, before the other male officers. On information and belief, the
14 police officers also informed the FBI of IBRAHIM's detention.

15 43. IBRAHIM was placed in a holding cell at the SFPD police station for
16 approximately two hours while she continued to suffer from severe back and abdominal pain.
17 IBRAHIM was not given her medication when she asked for it to relieve her pain. Eventually,
18 the paramedics were called as a result of IBRAHIM's medical condition. IBRAHIM was finally
19 given her medication after the paramedics left.

20 44. On information and belief, the FBI finally requested SFPD to release IBRAHIM
21 at approximately 11:15 a.m., over two hours after her flight had left. IBRAHIM was given no
22 information as to why her name was on the No-Fly List.

23 45. Defendants represented to plaintiff that her name had been removed from
24 the No-Fly List. The following day, on January 3, 2005, IBRAHIM discovered that she was still
25 on the No-Fly List when she attempted to fly again. After some effort, IBRAHIM was finally
26 allowed to fly to Kuala Lumpur, Malaysia. At SFO, however, and at every stop over, IBRAHIM
27 was publicly subjected to enhanced searches before boarding any flights.

28 46. On March 24, 2005, plaintiff submitted a request for Passenger Identity

1 Verification to the TSA, the only procedure then available, in an attempt to clear her name if the
 2 issue was simply a matter of misidentification. A response was not issued to IBRAHIM's
 3 request until approximately one year later, in March, 2006, after this action was filed. The
 4 response, however, did not even clarify IBRAHIM'S "No-Fly List" status and instead, simply
 5 stated that if "it has been determined that a correction to records is warranted, these records have
 6 been modified."

7 47. Moreover, on April 14, 2005, IBRAHIM's visa was revoked by letter from the
 8 United States Embassy in Malaysia. The letter cites to Section 212(a)(3)(B) of the Immigration
 9 and Nationality Act as the basis for the revocation of her visa. That section provides, in part, that
 10 any "alien" who "a consular officer, the Attorney General, or the Secretary of Homeland
 11 Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after
 12 entry in any terrorist activity" is "inadmissible." 8 U.S.C. § 1182(a)(3)(b).

13 48. IBRAHIM is informed and believes, and thereon alleges, that defendants do not
 14 remove individuals from the No-Fly List and other related watch lists, even when it would be
 15 appropriate to do so because, among other reasons, the individual has been misidentified or
 16 incorrectly placed on the list.

17 49. IBRAHIM is informed and believes, and thereon alleges, that defendants do not
 18 train their employees to determine when modification or removal of information on the No-Fly
 19 List is necessary, and have not implemented policies to ensure that modification or removal of
 20 names occurs when appropriate.

21 50. On July 1, 2005, plaintiff filed a claim with the City and County of San Francisco
 22 for her damages suffered as a result of defendants' conduct. On September 8, 2005, the City and
 23 County of San Francisco issued a letter, also rejecting plaintiff's claim.

24 **FIRST CAUSE OF ACTION**

25 **(42 U.S.C. § 1983 – Equal Protection – Against Defendants SFO,
 26 CCSF, SFPD, PATE, CUNNINGHAM, and MARON)**

27 51. Plaintiff re-alleges paragraphs 1 through 50 above and incorporates them herein
 28 by reference.

52. In doing the acts complained of herein, defendants deprived plaintiff of her right to Equal Protection under the United States Constitution as set forth under the Fourteenth Amendment to the United States Constitution;

53. IBRAHIM's name was placed on the No-Fly List. Moreover, defendants arrested IBRAHIM for several hours, although they lacked a warrant, probable cause, or any reasonable belief that she had committed a crime. IBRAHIM is informed and believes, and thereon alleges, that defendants made the arrest despite these obvious deficiencies, because they perceived she was Muslim and a citizen of Malaysia. On information and belief, defendants acted in a discriminatory manner, with the intent to discriminate on the basis of IBRAHIM's religious beliefs and her national origin as a citizen of Malaysia.

54. Defendants, in committing the acts herein alleged, were acting under color of state law.

55. Defendants were acting in accordance with a custom, policy and/or practice of the SFO, the SFPD, and CCSF in violating plaintiff's constitutional rights as set forth above.

56. As a direct and proximate result of defendants' wrongful acts alleged herein, plaintiff suffered severe damages, including humiliation and damage to her reputation, physical pain, emotional distress, and deprivation of her constitutional rights, according to proof at the time of trial.

57. Defendants committed the actions alleged herein maliciously, fraudulently, oppressively and with the wrongful intention of injuring plaintiff. Defendants acted with an improper motive amounting to malice and with conscious disregard of plaintiff's rights. As such, plaintiff is entitled to recover punitive damages from defendants in an amount according to proof at the time of trial.

SECOND CAUSE OF ACTION

(*Bivens* – Equal Protection – Against Defendant BONDANELLA)

58. Plaintiff re-alleges paragraphs 1 through 57 above and incorporates them herein by reference.

59. In doing the acts complained of herein, defendant BONDANELLA deprived

1 plaintiff of her right to Equal Protection under the United States Constitution as set forth under
 2 the Fourteenth Amendment to the United States Constitution;

3 60. BONDANELLA directed the SFPD to arrest IBRAHIM although he knew they
 4 lacked a warrant, probable cause, or any reasonable belief that she had committed a crime.
 5 IBRAHIM is informed and believes, and thereon alleges, that BONDANELLA gave this
 6 direction despite these obvious deficiencies, because he believed she was Muslim and a citizen
 7 of Malaysia. On information and belief, BONDANELLA acted in a discriminatory manner, with
 8 the intent to discriminate on the basis of IBRAHIM's religious beliefs and her national origin as
 9 a citizen of Malaysia.

10 61. In committing the acts herein alleged, BONDANELLA was acting under color of
 11 federal law.

12 62. As a direct and proximate result of BONDANELLA's wrongful acts alleged
 13 herein, plaintiff suffered severe damages, including humiliation and damage to her reputation,
 14 physical pain, emotional distress, and deprivation of her constitutional rights, according to proof
 15 at the time of trial.

16 63. BONDANELLA committed the actions alleged herein maliciously, fraudulently,
 17 oppressively and with the wrongful intention of injuring plaintiff. BONDANELLA acted with
 18 an improper motive amounting to malice and with conscious disregard of plaintiff's rights. As
 19 such, plaintiff is entitled to recover punitive damages from BONDANELLA in an amount
 20 according to proof at the time of trial.

21 THIRD CAUSE OF ACTION

22 (42 U.S.C. § 1983 – Fourth Amendment – Against Defendants SFO,
 23 CCSF, SFPD, PATE, CUNNINGHAM, and MARON)

24 64. Plaintiff re-alleges paragraphs 1 through 63 above and incorporates them herein
 25 by reference.

26 65. In doing the acts complained of herein, defendants deprived plaintiff of her right
 27 against unreasonable searches and seizures under the United States Constitution as set forth
 28 under the Fourth Amendment to the United States Constitution;

66. IBRAHIM's name was placed on the No-Fly List. Moreover, defendants arrested IBRAHIM for several hours and searched her, although they lacked a warrant, probable cause, or any reasonable belief that she had committed a crime.

67. In committing the acts herein alleged, defendants were acting under color of state law.

68. Defendants were acting in accordance with a custom, policy and/or practice of the SFO, the SFPD, and CCSF in violating plaintiff's constitutional rights as set forth above. Plaintiff is informed and believes, and thereon alleges, that defendants' actions alleged herein were the direct and proximate result of the San Francisco Airport's, CCSF's and the SFPD's failure adequately to train SFPD officers on what is required under the Fourth Amendment and the case law interpreting it to arrest a suspect lawfully, and specifically on whether an arrest may be made on the basis of an alleged placement on a government watch list. Such failure amounts to deliberate indifference to the rights of persons with whom the SFPD comes into contact.

69. As a direct and proximate result of defendants' wrongful acts alleged herein, plaintiff suffered severe damages, including humiliation and damage to her reputation, physical pain, emotional distress, and deprivation of her constitutional rights, according to proof at the time of trial.

70. Defendants committed the actions alleged herein maliciously, fraudulently, oppressively and with the wrongful intention of injuring plaintiff. Defendants acted with an improper motive amounting to malice and with conscious disregard of plaintiff's rights. As such, plaintiff is entitled to recover punitive damages from defendants in an amount according to proof at the time of trial.

FOURTH CAUSE OF ACTION

(Bivens – Fourth Amendment – Against Defendant BONDANELLA)

71. Plaintiff re-alleges paragraphs 1 through 70 above and incorporates them herein by reference.

72. In doing the acts complained of herein, BONDANELLA deprived plaintiff of her right against unreasonable searches and seizures under the United States Constitution as set forth

1 under the Fourth Amendment to the United States Constitution;

2 73. BONDANELLA directed defendants to arrest IBRAHIM, although he knew they
3 lacked a warrant, probable cause, or any reasonable belief that IBRAHIM had committed a
4 crime. BONDANELLA's direction proximately caused plaintiff's arrest.

5 74. In committing the acts herein alleged, BONDANELLA was acting under color of
6 federal law.

7 75. As a direct and proximate result of BONDANELLA's wrongful acts alleged
8 herein, plaintiff suffered severe damages, including humiliation and damage to her reputation,
9 physical pain, emotional distress, and deprivation of her constitutional rights, according to proof
10 at the time of trial.

11 76. BONDANELLA committed the actions alleged herein maliciously, fraudulently,
12 oppressively and with the wrongful intention of injuring plaintiff. BONDANELLA acted with
13 an improper motive amounting to malice and with conscious disregard of plaintiff's rights. As
14 such, plaintiff is entitled to recover punitive damages from BONDANELLA in an amount
15 according to proof at the time of trial.

16 **FIFTH CAUSE OF ACTION**

17 **(42 U.S.C. § 1983 – Freedom of Religion – Against Defendants SFO, 18 CCSF, SFPD, PATE, CUNNINGHAM, and MARON)**

19 77. Plaintiff re-alleges paragraphs 1 through 76 above and incorporates them herein
20 by reference.

21 78. In doing the acts complained of herein, defendants deprived plaintiff of her
22 freedom of religion under the United States Constitution as set forth under the First Amendment
23 to the United States Constitution;

24 79. Plaintiff's name was placed on the No-Fly List. Plaintiff is an identifiable
25 Muslim woman who wears the hijab. Moreover, defendants arrested IBRAHIM for several
26 hours, although they lacked a warrant, probable cause, or any reasonable belief that she had
27 committed a crime. Plaintiff is informed and believes, and thereon alleges, that defendants
28 arrested her because of her protected religious expression and because they perceived she was

1 Muslim

2 80. Defendants, in committing the acts herein alleged, were acting under color of state
3 law.

4 81. Defendants were acting in accordance with a custom, policy and/or practice of the
5 SFO, the SFPD, and CCSF in violating plaintiff's constitutional rights as set forth above.

6 82. As a direct and proximate result of defendants' wrongful acts alleged herein,
7 plaintiff suffered severe damages, including humiliation and damage to her reputation, physical
8 pain, emotional distress, and deprivation of her constitutional rights, according to proof at the
9 time of trial.

10 83. Defendants committed the actions alleged herein maliciously, fraudulently,
11 oppressively and with the wrongful intention of injuring plaintiff. Defendants acted with an
12 improper motive amounting to malice and with conscious disregard of plaintiff's rights. As
13 such, plaintiff is entitled to recover punitive damages from defendants in an amount according to
14 proof at the time of trial.

15 **SIXTH CAUSE OF ACTION**

16 **(*Bivens* – First Amendment Freedom of Religion – Against Defendant BONDANELLA)**

17 84. Plaintiff re-alleges paragraphs 1 through 83 above and incorporates them herein
18 by reference.

19 85. In doing the acts complained of herein, BONDANELLA deprived plaintiff of her
20 freedom of religion under the United States Constitution as set forth under the First Amendment
21 to the United States Constitution;

22 86. Plaintiff is informed and believes, and thereon alleges, that BONDANELLA
23 directed defendants to arrest her because he believed she was Muslim.

24 87. In committing the acts herein alleged, BONDANELLA was acting under color of
25 federal law.

26 88. As a direct and proximate result of BONDANELLA's wrongful acts alleged
27 herein, plaintiff suffered severe damages, including humiliation and damage to her reputation,
28 physical pain, emotional distress, and deprivation of her constitutional rights, according to proof

1 at the time of trial.

2 89. BONDANELLA committed the actions alleged herein maliciously, fraudulently,
3 oppressively and with the wrongful intention of injuring plaintiff. BONDANELLA acted with
4 an improper motive amounting to malice and with conscious disregard for plaintiff's rights. As
5 such, plaintiff is entitled to recover punitive damages from BONDANELLA in an amount
6 according to proof at the time of trial.

7 SEVENTH CAUSE OF ACTION

8 (42 U.S.C. § 1983 – First Amendment Right to Freedom of Association – Against 9 Defendants SFO, CCSF, SFPD, PATE, CUNNINGHAM, and MARON)

10 90. Plaintiff re-alleges paragraphs 1 through 89 above and incorporates them herein
11 by reference.

12 91. In doing the acts complained of herein, defendants deprived plaintiff of her
13 freedom of association under the United States Constitution, which is protected under the First
14 Amendment to the United States Constitution;

15 92. Plaintiff's name was placed on the No-Fly List. Plaintiff is an identifiable
16 Muslim woman who wears the hijab. Moreover, defendants arrested IBRAHIM for several
17 hours, although they lacked a warrant, probable cause, or any reasonable belief that she had
18 committed a crime. Defendants violated plaintiff's freedom of association in that, on
19 information and belief, defendants arrested plaintiff based on her association with the Muslim
20 community or the Islamic religion, and based on her national origin.

21 93. Defendants, in committing the acts herein alleged, were acting under color of state
22 law.

23 94. Defendants were acting in accordance with a custom, policy and/or practice of the
24 SFO, the SFPD, and CCSF in violating plaintiff's constitutional rights as set forth above.

25 95. As a direct and proximate result of defendants' wrongful acts alleged herein,
26 plaintiff suffered severe damages, including humiliation and damage to her reputation, physical
27 pain, emotional distress, and deprivation of her constitutional rights, according to proof at the
28 time of trial.

NINTH CAUSE OF ACTION

**(Interference With Exercise Of Civil Rights – California Civil Code Section 52.1 –
Against Defendants CCSF, SFPD, PATE, CUNNINGHAM, MARON,
BONDANELLA, and USIS)**

103. Plaintiff re-alleges paragraphs 1 through 102 above and incorporates them herein by reference.

104. Defendants' conduct alleged herein interfered with, or constituted an attempt to interfere with, plaintiffs' constitutional rights by threatening or committing violent acts, in that defendants caused plaintiff's arrest without a warrant or other legal process, without probable cause, and without any reasonable belief that plaintiff had committed a crime. Plaintiff is informed and believes, and thereon alleges, that defendants caused her to be arrested despite these obvious deficiencies because they perceived she was Muslim or affiliated with the Muslim community, and because of her national origin.

105. The arrest interfered with plaintiff's constitutional rights granted to her under the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution, and article I, sections 3, 4, 7, 13 and 15 of the California Constitution, through violence or the threat of violence.

106. As a proximate result of the acts of defendants herein alleged, plaintiff incurred both economic and noneconomic damages.

107. Plaintiff is informed and believes, and thereon alleges, that defendants committed the actions alleged herein maliciously, fraudulently, oppressively and with the wrongful intention of injuring plaintiff. Defendants acted with an improper, evil motive amounting to malice and with conscious disregard of plaintiff's rights. As such, plaintiff is entitled to recover punitive damages from defendants in an amount according to proof at the time of trial.

TENTH CAUSE OF ACTION

**(False Imprisonment – Against Defendants CCSF, SFPD, PATE, CUNNINGHAM,
MARON, BONDANELLA, and USIS)**

108. Plaintiff re-alleges paragraphs 1 through 107 above and incorporates them herein by reference.

1 109. On January 2, 2005, at SFO, defendants caused plaintiff's arrest, without a
2 warrant, or other legal process, without probable cause and without any reasonable belief that
3 plaintiff had committed a crime.

4 110. Plaintiff was imprisoned at the SFO police station for hours.

5 111. As a proximate result of the acts of defendants herein alleged, plaintiff incurred
6 both economic and noneconomic damages.

7 112. Defendants committed the actions alleged herein maliciously, fraudulently,
8 oppressively and with the wrongful intention of injuring plaintiff. Defendants acted with an
9 improper, evil motive amounting to malice and with conscious disregard of plaintiff's rights. As
10 such, plaintiff is entitled to recover punitive damages from defendants in an amount according to
11 proof at the time of trial.

12 **ELEVENTH CAUSE OF ACTION**

13 **(Intentional Infliction of Emotional Distress – Against Defendants CCSF, SFPD, PATE, 14 CUNNINGHAM, MARON, BONDANELLA, and USIS)**

15 113. Plaintiff re-alleges paragraphs 1 through 112 above and incorporates them herein
16 by reference.

17 114. On January 2, 2005, defendants caused plaintiff's arrest, knowing that they lacked
18 a warrant or other legal process. Defendants caused the arrest, knowing that they lacked
19 probable cause or any reasonable belief that plaintiff had committed a crime. Therefore,
20 defendants caused the arrest with the intention of causing, or reckless disregard of the probability
21 of causing, emotional distress for plaintiff.

22 115. On information and belief, the acts of the defendants herein alleged were willful,
23 despicable, malicious, and oppressive.

24 116. As a proximate result of the acts of defendants herein alleged, plaintiff incurred
25 severe emotional distress and mental suffering. Plaintiff experienced extreme humiliation,
26 shame, and anger when:

27 a) Defendants, police officers, handcuffed plaintiff in front of her fourteen
28 year old daughter at the San Francisco Airport, on the morning of January 2, 2005;

1 b) A crowd of passengers gathered to watch defendants, police officers,
2 detain and arrest plaintiff, without a warrant or probable cause, at the San Francisco Airport on
3 the morning of January 2, 2005;

4 c) Defendants, police officers, forced plaintiff to miss her flight by detaining
5 and arresting her without a warrant or probable cause;

6 d) Defendant, MARON, removed part of plaintiff's hijab and loosened
7 plaintiff's hair;

8 e) Defendants, police officers, caused plaintiff to experience abdominal pain
9 and high blood pressure by incarcerating plaintiff in a detention area without access to her
10 medications;

11 f) Defendants, police officers, forced plaintiff to urinate in a public area
12 while in the holding cell.

13 g) Defendants represented to plaintiff that her name had been removed from
14 the No-Fly List, but plaintiff later discovered that defendants had in fact made no effort to
15 remove plaintiff from the No-Fly List.

16 **TWELFTH CAUSE OF ACTION**

17 **(Negligent Infliction of Emotional Distress – Against Defendants CCSF, SFPD, PATE,**
18 **CUNNINGHAM, MARON, BONDANELLA, and USIS)**

19 117. Plaintiff re-alleges paragraphs 1 through 116 above and incorporates them herein
20 by reference.

21 118. On January 2, 2005, defendants knew or should have known that arresting and
22 imprisoning plaintiff without a warrant or probable cause would cause plaintiff severe emotional
23 distress.

24 119. On January 2, 2005, defendants caused plaintiff's arrest, knowing that they lacked
25 a warrant or other legal process. Defendants caused the arrest, knowing that they lacked
26 probable cause or any reasonable belief that plaintiff had committed a crime.

27 120. On information and belief, the acts of the defendants herein alleged were willful,
28 despicable, malicious, and oppressive.

121. As a proximate result of the acts of defendants herein alleged, plaintiff incurred severe emotional distress and mental suffering. Plaintiff experienced extreme humiliation, shame, and anger when:

a) Defendants, police officers, handcuffed plaintiff in front of her fourteen year old daughter at the San Francisco Airport, on the morning of January 2, 2005;

b) A crowd of passengers gathered to watch defendants, police officers, detain and arrest plaintiff, without a warrant or probable cause, at the San Francisco Airport on the morning of January 2, 2005;

c) Defendants, police officers, forced plaintiff to miss her flight by detaining and arresting her without a warrant or probable cause;

d) Defendant, MARON, removed part of plaintiff's hijab and loosened plaintiff's hair;

e) Defendants, police officers, caused plaintiff to experience abdominal pain and high blood pressure by incarcerating plaintiff in a detention area without access to her medications;

f) Defendants, police officers, forced plaintiff to urinate in a public area;

g) Defendants represented to plaintiff that her name had been removed from the No-Fly List, but plaintiff later discovered that defendants had in fact made no effort to remove plaintiff from the No-Fly List.

THIRTEENTH CAUSE OF ACTION

(Violation Of The United States Constitution and the APA, Under The APA And The First, Fourth, Fifth And Fourteenth Amendments To The United States Constitution – Against Defendants DHS, HOLDER, FBI, MUELLER, TSC, CUMMINGS, BOYLE, BUCELLA, NAPOLITANO, CHERTOFF, RIDGE, NCTC, LEITER, DOS, and CLINTON)

122. Plaintiff re-alleges paragraphs 1 through 121 above and incorporates them herein by reference.

123. Defendants are responsible for implementing HPSD-6, coordinating the operations of the TSC, and/or maintaining, administering, compiling, and correcting the TSC's TSDB, including the No-Fly List. Defendants erroneously placed IBRAHIM's name on a

1 government watch list on an improper and unconstitutional basis, disseminated this fact to
2 various government agencies, state actors, and private individuals in error, and subsequently
3 failed to remove her name from the list despite her request for redress, which resulted in her
4 unlawful arrest and, IBRAHIM is informed and believes, the unfounded revocation of her visa.
5 In doing the acts complained of herein, defendants were acting within their respective official
6 capacities and under color of authority. In doing the acts complained of herein, defendants
7 deprived plaintiff of her right to procedural and substantive due process, equal protection,
8 freedom of religion, and freedom of association under the United States Constitution as set forth
9 under the First, Fifth and Fourteenth Amendments to the United States Constitution.

10 124. The No-Fly List or any government screening list, and the placement of
11 IBRAHIM on such lists is unconstitutional in that it violates the due process protections
12 guaranteed under the Fifth and Fourteenth Amendments of the United States Constitution. On
13 information and belief, the placement of names on the No-Fly List is done in an arbitrary and
14 capricious manner and without any factual findings or rational basis.

15 125. Defendants' actions in administering and maintaining the No-Fly List deprived
16 plaintiff of liberty and property interests protected by the Fifth Amendment. Plaintiff has a right
17 to be free from being falsely stigmatized as an individual associated with terrorist activity,
18 where, as here, the stigma causes a change in legal status that affects her ability to travel and
19 work in academia, her chosen profession. Defendants' actions alleged herein publicly made
20 clear that the United States government considered IBRAHIM a security risk, a charge which
21 IBRAHIM denies. Defendants are grossly negligent, reckless, and/or deliberately indifferent to
22 the risk that the deprivations these actions cause. The deprivations are without due process of
23 law because plaintiff was not informed of her placement on the No-Fly List or given any
24 opportunity to contest such placement. Also, defendants have failed to provide constitutionally
25 adequate mechanisms for plaintiff to avoid being subjected to the stigma, interrogations, delays,
26 enhanced searches, detentions, and/or other travel impediments associated with having a name
27 identical or similar to a name on the No-Fly List.

28 126. Plaintiff is an identifiable Muslim woman who wears the hijab. On information

1 and belief, defendants acted in a discriminatory manner, with the intent to discriminate, in that
2 IBRAHIM was placed on the No-Fly List based on her religious beliefs and her national origin
3 as a citizen of Malaysia. Plaintiff is informed and believes, and thereon alleges, that defendants
4 would not have engaged in the conduct alleged herein but for her religious affiliation and
5 national origin. Plaintiff is informed and believes, and thereon alleges, that defendants habitually
6 place Muslims and Malaysian nationals on government watchlists, or fail to remove them from
7 such watchlists, on the basis of religion and national origin, without conducting an individualized
8 investigation, and regardless of whether defendants can articulate any facts in support of such
9 placement or non-removal. Defendants' placement of IBRAHIM's name on the No-Fly list on
10 these impermissible bases, and subsequent failure to remove it, violated her First Amendment
11 rights of freedom of religion and freedom of association, and her Fifth and Fourteenth
12 Amendment right to equal protection.

13 127. Defendants' actions alleged herein were arbitrary, capricious, an abuse of
14 discretion, and not in accordance with the law, in violation of the APA. Defendants have failed
15 to adopt adequate procedures to prevent misidentification or to ensure that incorrect information
16 is modified or removed from the TSC's TSDB, as required by the 2003 MOU implementing
17 HPSD-6.

18 128. An actual and immediate controversy has arisen and now exists between plaintiff
19 and defendants related to their respective rights and duties. Defendants have acted arbitrarily
20 and capriciously, abused their discretion, and unlawfully failed to comply with constitutional
21 requirements by engaging in the acts and omissions described in this Complaint. Plaintiff is,
22 therefore, entitled to a declaration of rights over this controversy.

23 129. Plaintiff has no adequate remedy at law. Defendants have acted, and continue to
24 act, to deprive plaintiff of her constitutional rights. Plaintiff is suffering and will continue to
25 suffer irreparable injury as a result of the policies and practices described in this Complaint
26 unless those policies and practices are enjoined by this Court. Plaintiff has no plain, adequate, or
27 speedy remedy at law and is entitled to injunctive relief against defendants. Plaintiff has no
28 administrative remedy because defendants' policies and practices preclude any administrative

determinations from affording actual relief.

PRAYER

WHEREFORE, plaintiffs pray for the following relief:

- a. For compensatory damages according to proof;
- b. For civil penalties, to the extent provided by law;
- c. For exemplary and punitive damages according to proof;
- d. For costs of suit, including attorneys' fees;
- e. For a declaration, order, and judgment that defendants' placement of IBRAHIM'S name on the No-Fly List and their subsequent failure to remove her name from the No-Fly List were arbitrary and capricious, an abuse of discretion, unauthorized by law, and contrary to IBRAHIM'S rights under the First, Fifth, and Fourteenth Amendments to the United States Constitution.
- f. For an injunction requiring defendants to remove IBRAHIM's name from the No-Fly List database maintained by the TSC, and from any other related database maintained or accessed by other federal agencies, including but not limited to, databases maintained or accessed by the NCTC, the FBI, the DOS, the DHS, the TSA, the TSOC, USIS, or any other agency that maintains information regarding individuals whose names have been placed on the No-Fly List or other watch list due to alleged terrorist-related activities; and
- g. For an injunction requiring defendants to communicate the removal of IBRAHIM'S name from the No-Fly List to the United States Visa Office, the United States Embassy in Kuala Lumpur, Malaysia, and any other government agency, foreign or domestic, that relies on information from the NCTC, the TSC, the FBI, the DOS, the DHS, or the TSA, to identify visa applicants who may be inadmissible pursuant to Section 212(a)(3)(B) of the Immigration and Nationality Act; or
- h. Alternatively, for a declaration, order, and judgment that IBRAHIM is entitled to a name-clearing hearing regarding the placement of her name on the TSC's

TSDB; and

- i. For an injunction requiring defendants to provide IBRAHIM with a name clearing hearing regarding the placement of her name on the TSC's TSDB; and
- j. Such other and further relief as the Court may deem appropriate.

Dated: March 27, 2009

McMANIS FAULKNER

Christine E. Peek
JAMES McMANIS
MARWA ELZANKALY
CHRISTINE PEEK

Attorneys for Plaintiff,
RAHINAH IBRAHIM

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

Dated: March 27, 2009

McMANIS FAULKNER

Christine E. Peek
JAMES McMANIS
MARWA ELZANKALY
CHRISTINE PEEK

Attorneys for Plaintiff,
RAHINAH IBRAHIM